

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of:</b>	}	
	}	<b>MB Docket No. 04-261</b>
<b>Violent Television Programming</b>	}	
<b>And Its Impact on Children</b>	}	

**TO: THE COMMISSION**

**COMMENTS OF  
PAPPAS TELECASTING COMPANIES**

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October 15, 2004

## **SUMMARY**

Television programming is a powerful force in our society. It has the power to educate, entertain, and inform the public. It also has the power to cause harm to this nation's youth if it displays indecent or violent programming.

The Notice of Inquiry in this proceeding raises many issues relating to the delivery of violent programming to our local communities. Pappas Telecasting Companies has significant experience as a television licensee, and an affiliate of network programming. Pappas has regularly expressed its concern about the delivery of indecent and violent programming to the communities it is licensed to serve, and applauds the Commission's review of this matter. As discussed in the NOI, there is an established link between violent programming and violent and aggressive behavior of children, and Pappas believes that steps must be taken to eliminate this problem.

While the Commission examines how to effectively define violent programming and what steps it should take to protect our youth from violent programming, it should not limit itself to just restrictions on the content of the programming. Instead, the Commission must also consider when and how the programming is delivered. Pappas supports the creation of a "safe harbor" outside of which violent programming, like indecent programming, should not be aired. Pappas believes that this safe harbor should not only apply to broadcasters, but to all FCC-licensed providers of mass communications, except for common carriers who do not control the content carried by their systems.

Pappas also urges the Commission to adopt measures to protect network-affiliated stations from unintentionally providing violent programming by requiring the networks to provide sufficient time for the network affiliates to preview programming prior to the airing of the programming. As the recent events with the Super Bowl and Fox Television Networks demonstrate, additional steps must be taken to protect the public from indecent and violent programming, and providing advance clearance for network affiliates will go a long way to resolving this problem.

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Pappas Telecasting Companies (“Pappas”), by and through its attorneys, hereby submits the following comments in response to the *Notice of Inquiry* relating to the presentation of violent programming on television and its impact on children.<sup>1</sup> Pappas is the largest privately-owned television broadcaster in the United States, and operates television stations that are affiliates of most of the major television networks. Pappas has more than 30 years of experience delivering quality television programs to local communities.

Pappas is pleased to participate in this proceeding and urges the Commission to adopt rules that will protect the nation’s children from being exposed to violent television programming. Over the years, Pappas has been a strong supporter of efforts to protect children from harmful television programming, and believes that this proceeding has the potential to make a significant difference for this country’s children. Pappas believes that the time has come for the Commission to impose restrictions on indecent and violent programming on all FCC-licensed providers of mass communications, including broadcasters, satellite operators, cable operators, and Broadband and Radio Service licensees, with the exception of common carriers who do not, by their nature, have control over the content of the programming they provide.

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<sup>1</sup> *Violent Television Programming and Its Impact on Children*, Notice of Inquiry, 19 FCC Rcd 14,394 (2004) (“NOI”).

In addition to the adoption of specific restrictions on violent television programming, Pappas urges the Commission to take the opportunity to strengthen its rules to permit local network affiliates to preview indecent or violent network programming prior to the scheduled airing to ensure that the licensee will not be held responsible for content which they did not have the opportunity to review.

## **BACKGROUND**

Through its affiliated entities, Pappas is the licensee or permittee of 18 full-power television stations, operates three additional full-power stations pursuant to local marketing agreements, and provides free over-the-air local television programming in 16 markets in 10 states across the country.<sup>2</sup>

Pappas has long been an active participant in the Commission's proceedings affecting television and radio matters, and its Chairman, President, and Chief Executive Officer, Harry J. Pappas, has testified before the United States Congress and the Federal Communications Commission on localism, indecency and network-related matters. Most recently, on February 26, 2004, Mr. Pappas testified before the House of Representative's Energy and Commerce

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<sup>2</sup> Pappas operates the following full-power stations in the following markets: WWSW-TV, Opelika, Alabama (Columbus, Georgia Designated Market Area or "DMA"); KPWB-TV, Ames, Iowa (Des Moines, Iowa DMA); KMPH(TV), Visalia, California, and KFRE-TV, Sanger, California (Fresno, California DMA) WTWB-TV, Lexington, North Carolina (Greensboro-Winston-Salem-High Point, North Carolina DMA); KAZH(TV), Baytown, Texas (Houston, Texas DMA); KDBC-TV, El Paso, Texas (El Paso, Texas DMA); KTVG(TV), Grand Island, Nebraska, KHGI-TV, Kearney, Nebraska, KSNB-TV, Superior, Nebraska, and KWNB-TV, Hayes Center, Nebraska (Lincoln-Hastings-Kearney, Nebraska DMA); KAZA-TV, Avalon, California (Los Angeles, California DMA); WMMF-TV, Fond du Lac, Wisconsin (Green Bay, Wisconsin DMA); KPTM(TV) and KXVO(TV), Omaha, Nebraska (Omaha, Nebraska DMA); KREN-TV, Reno, Nevada (Reno, Nevada DMA); KTNC-TV, Concord, California, (San Francisco, San Jose and Sacramento-Modesto, California DMAs); KUNO-TV, Fort Bragg, California (San Francisco, California DMA), KPTH(TV), Sioux City, Iowa (Sioux City, Iowa DMA); KSWT(TV), Yuma, Arizona (Yuma, Arizona/El Centro, California DMA) KAZW-TV, Walla Walla, Washington (Yakima-Pasco-Richland-Kennewick, Washington DMA).

Committee's Subcommittee on Telecommunications and the Internet, and on July 21, 2004, Mr. Pappas testified before the FCC's Localism Task Force in Monterey, California.

A central theme of Mr. Pappas' testimony before both panels was his deep concern about the proliferation of indecent and profane language and violent programming, on network television, and the effect of such programming on the children in the communities served by Pappas' television stations. When testifying before Congress, Mr. Pappas encouraged Congress to "show leadership in stemming the tide of profanity and indecency and gratuitous violence."<sup>3</sup> This "race to the bottom," Mr. Pappas averred, has led to programming that serves the "lowest common denominator of poor taste, sexual or violent content, and profanity" that permeates daytime and prime-time programming provided by the major networks. *Id.*

Mr. Pappas also addressed the inability of network affiliates to review programming before its scheduled broadcast time. Specifically, Mr. Pappas stated that "local affiliates have been virtually stripped of any right to receive programming in advance and to evaluate its content." *Id.* Mr. Pappas' testimony was supported by numerous cases of such incidents that were referenced in the "Petition For Inquiry Into Network Practices" filed with the FCC by the Network Affiliated Stations Alliance in March 2001. *Id.*

On the heels of Mr. Pappas' testimony, the Commission released the NOI in this proceeding, asking the public to provide assistance in defining violent programming, measuring the effect of violent programming on children, and determining what constitutional and statutory constraints prevent the Commission from enacting rules to restrict violent programming. Pappas welcomes this opportunity, and makes the following observations.

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<sup>3</sup> Mr. Harry J. Pappas, Testimony before the United States House of Representatives, Committee of Energy and Commerce, Subcommittee on Telecommunications and Internet (Feb. 26, 2004).

## DISCUSSION

### A. Defining The Problem – What Is Violent Programming?

As a long-time broadcaster, Pappas is well aware of the dramatic impact that television has on the American public. Television informs, entertains, and helps bring together families and communities to share common experiences and witness dramatic world events.

Television also has the potential to serve as a vital resource for educating, informing, and entertaining children. The Commission recognized this important role and established limitations on the amount of commercial advertising a station may air within children's programming, and imposed specific quantitative requirements on television licensees to provide quality programming designed to meet the educational and informational needs of children.<sup>4</sup>

Despite this great potential to serve as a positive influence on children, television can impact children negatively as well. As noted by the FCC itself in the NOI, a recent study by the Parent Television Council detailed the significant increase in the quantity of violent programming in network television from 1998 to 2002. Specifically, the occurrence of violence in network programming aired between 8pm and 9pm increased 41%, and the amount of violence in network programming aired between 9pm and 10pm increased 134.4%.<sup>5</sup> Other studies cited by the Commission in the NOI also point to the substantial increase in violent programming on the networks, including a substantial increase of violent programming on both network and basic cable channels.<sup>6</sup>

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<sup>4</sup> See 47 C.F.R. §§ 73.670, 73.671, 73.673 (2003). See also *Report and Order, Policies and Rules Concerning Children's Television Programming, Revision of Programming Policies for Television Broadcast Stations*, MM Docket 93-48 11 FCC Rcd 10660 (1996); Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394.

<sup>5</sup> See *TV Bloodbath: Violence on Prime Time Broadcast TV – A PTC State of the Television Industry Report*, Parent Television Council (2003) (<http://www.parentstv.org/ptc/publications/reports/stateindustryviolence/main.asp>) (last visited October 11, 2004).

<sup>6</sup> See *NOI*, ¶ 3 (citing UCLA Center for Communication Policy, 1997 TV Violence Report).



As the Commission noted in the NOI, there have been numerous studies conducted to measure the impact on children of viewing violent programming. Detailed studies conducted by the United States Surgeon General and the Federal Trade Commission concluded that there is “strong evidence”<sup>7</sup> demonstrating a “high correlation”<sup>8</sup> between viewing television violence and aggressive and violent behavior among children. Similar findings were made by the Senate Committee on Commerce, Science, and Transportation in Senate Report 108-253, where several scientific studies were cited as evidence of this connection.<sup>9</sup> For example, a ten-year study conducted by the National Institute for Mental Health “affirmed the link between violent programming and violent behavior in children...concluding that TV violence affects all children, not just those predisposed to aggression.”<sup>10</sup>

Thus, with the negative impact of violent programming on children effectively established by numerous scientific studies,<sup>11</sup> the initial task for the FCC in moving forward to regulate such programming to protect children must be to determine the appropriate definition for violent programming. While the NOI proposes several different definitions, Pappas suggests that the Commission adopt the definition used by the National TV Violence Study. Specifically, the NOI reports that the National TV Violence Study, which was conducted by media researchers from four universities and an oversight council, adopted the following definition:

Any overt depiction of a credible threat of physical force or the actual use of such force intended to physically harm an animate being or group of beings. Violence

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<sup>7</sup> See *Youth Violence: A Report of the Surgeon General* (2001).

<sup>8</sup> See Federal Trade Commission, *Marketing Violent Entertainment to Children* (2000).

<sup>9</sup> S. Rep. No. 108-253, at pgs. 6-9 (2004) [hereinafter *Senate Report*].

<sup>10</sup> *Id.* at 7 (citing National Institute of Mental Health, *Television and Behavior: Ten Years of Scientific Progress and Implications for the Eighties* (David Pearl *et al.* eds., 1982)).

<sup>11</sup> In fact, the *NOI* cites one authority that stated that “more than 3500 research studies have examined the association between media violence and violent behavior...[and]...all but 18 have shown a positive relationship.” See *NOI*, ¶7, nt. 18.

also includes certain depictions of physically harmful consequences against an animate being or group that occur as a result of unseen violent means.<sup>12</sup>

Pappas supports the adoption of this definition because it captures both visible and unseen violent acts, and directly ties these actions to the harmful consequences to another living being from such overt or unobserved actions.<sup>13</sup>

A number of the other definitions suggested in the NOI fail to include this contextual relationship. For example, the adoption of either of the following proposed definitions: (1) “the overt expression of force intended to hurt or kill”<sup>14</sup> or (2) “the act of, attempt at, physical threat of or the consequences of physical force”<sup>15</sup>, do not require the consideration of the context in which the action has taken place, and are too narrowly tailored to consider violent programming in all different forms.

Finally, Pappas urges the Commission to carve out an exception for league-sanctioned sporting events, such as NFL, NBA, and NHL games, but to include within its definition programming that masquerades as sports programming, such as professional wrestling and “reality” programming. Examined under the purview of a definition that focuses on the nature and context of the violent behavior, it is evident that league-sanctioned sporting events do not rise to the same level of concern created by violent imagery contained in *Terminator 2*. Pappas believes that entertainment-based sports programming, such as professional wrestling and reality programming, contain significant levels of gratuitous violence. Pappas believes that this sort of programming fails to provide an appropriate context for proper evaluation by children and that

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<sup>12</sup> *NOI*, ¶ 9 (citing National TV Violence Study 27, § II.D.1 (Joel Federman ed)).

<sup>13</sup> *See NOI*, ¶ 13 (noting that 70% of violent scenes do not show penalty or remorse for violent acts, and 40% of violence scenes include humor).

<sup>14</sup> *See NOI*, ¶ 8 (citing TV Violence Report at §1.B).

<sup>15</sup> *Id.* (citing TV Violence Report at §II.D.1).

such programming has the potential to result in mimicked physical/emotional aggressive behavior.

**B. Solving The Problem – What Possible Solutions Exist?**

Only with the establishment of a suitable and effective definition of violent programming is it possible to consider restrictions formulated to provide adequate protections for children viewing television.

The NOI first discusses possible steps that could be taken to ensure that the V-Chip satisfies its intended goals.<sup>16</sup> According to the NOI, which cites a 1998 study by the Keiser Family Foundation, close to 80% of the network programming containing violent acts did not adequately specify the appropriate content label.<sup>17</sup> While Pappas does not have more updated information, Pappas encourages Congress and the FCC to take steps to encourage the correct implementation of the voluntary TV Parental Guidelines by the networks.

In addition, Pappas strongly supports the adoption of a “safe harbor” for violent programming, much as there is a safe harbor for indecent programming, as a means of protecting America’s children from violent programming.<sup>18</sup> The creation of a “safe harbor” would enable the public to be more confident that the programming available outside the safe harbor period would be free of harmful violent programming.

Not only should this safe harbor apply to broadcasters, but also to all FCC-licensed providers of mass communications, including satellite operators, cable operators, and Broadband

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<sup>16</sup> See NOI, ¶16 (citing 47 C.F.R. § 15.120(b) (the installation of the V-Chip has been mandatory in all television sets with a thirteen inch or larger screen since January 1, 2000)).

<sup>17</sup> See NOI, ¶ 17 (citing Dale Kunkel, et. al., *Rating The TV Ratings: One Year Out, An Assessment of the Television Industry’s Use of V-Chip Ratings* (A Henry J. Kaiser Family Foundation Report )(Sept. 1998)).

<sup>18</sup> See NOI, ¶ 20. See also 47 C.F.R. §73.3999 (2003).

and Radio Service licensees, with the exception of common carriers that do not, by their nature, have control over the content of the programming they provide. Pappas believes that there has not been demonstrated a difference in the effect of violence on children if the programming is delivered via broadcasters or MVPD provider, so there should not be a difference in the rules that apply to these varying delivery mechanisms.

In the NOI, the Commission discusses the statutory and constitutional issues arising from the adoption of a “safe harbor.” Pappas believes that since the interests to be protected (as well as the First Amendment concerns) with respect to TV violence are substantially the same as those in the indecency context, a review of the safe harbor analysis in the indecency context could be applied to the consideration of a safe harbor in the TV violence context. The Senate Report concludes that the adoption of a safe harbor period for violent programming would pass constitutional muster.

As support for this conclusion, the Senate Report cites the DC Court of Appeals decision relating to the adoption of the children’s television rules, in which a majority of the full DC Court of Appeals found that the adoption of a safe harbor approach would satisfy the “strict scrutiny” test utilized for challenges based on the First Amendment.<sup>19</sup> The Senate Report recognizes that similar compelling interests arising from indecent programming are also present when considering violent programming, and that “Congress has developed a long and detailed record to justify the violence safe harbor approach.”<sup>20</sup> While the Senate Report examines other approaches to protect children from violent programming, it concludes that:

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<sup>19</sup> *Senate Report*, pg. 13. Under the strict scrutiny test, a regulation that limits freedom of speech based on the content must use “the least restrictive means to further the articulated interest.” *Id.* at pg. 17 (citing *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115, 126 (1989)).

<sup>20</sup> *Id.* pg. 14.

The safe harbor approach is the only approach that has a significant chance of furthering the compelling governmental interest in protecting American children from the impact of television violence.<sup>21</sup>

In light of these considerations, Pappas supports the safe harbor approach. Coupled with stronger enforcement of the TV Programming Standards, the safe harbor approach would provide substantive protection from violent programming.

**C. Enforcing The Solution – How Can The Local Broadcasters And The FCC Work To Protect Our Youth?**

Finally, assuming that the solutions discussed above pass constitutional muster, the FCC and local broadcasters must have a joint role in ensuring continued protection of children from violent programming provided on network television.

As an initial matter, the Commission must take action to ensure that a network affiliate has the discretion and ability to exercise its right to reject network programming that it finds violates either the FCC-established indecency or violence guidelines. Section 73.658(e) of the Commission's rules was adopted in order to provide network affiliates the ability to reject or preempt programming that, in the sole discretion of the licensee, was unsuitable or contrary to the public interest.

Since the release of the NOI, progress has been made between networks and affiliates in terms of language changes in affiliation agreements intended to preserve the affiliates right to reject programming without fear of retribution or loss of their network affiliation. This essentially settles the claims raised by the Network Affiliated Stations Alliance in its above-referenced March 2001 petition.

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<sup>21</sup> *Id.* pg. 17.

However, despite demands from network affiliates,<sup>22</sup> it is still common practice for network affiliates to provide programming to affiliates with inadequate time for advance clearance. This can lead to the unintended airing of indecent or violent programming.

A recent example of this problem is evidenced by the Notice of Apparent Liability for Forfeiture released on October 12, 2004, against each Fox Television Network station and all but one Fox affiliated station.<sup>23</sup> The NAL concluded that certain portions of the television program were indecent and were broadcast outside the indecency safe harbor period.<sup>24</sup> While the Commission found in the NAL that the affiliates liable because they “could have preempted it,” the reality is less clear. *Id.*

In many cases, networks do not provide sufficient time to review programming prior to the airing of the program. In fact, the one Fox network affiliate that did not air the program on October 7, 2003, had made its decision six months earlier, and released a press statement announcing its decision.<sup>25</sup> The Pappas Fox-affiliated stations did not receive an advance feed of the program. To eliminate such problems in the future, Pappas urges the Commission to require networks to provide at least six hours clearance time for non-live events so that the licensee may make a good faith judgment to air the programming.

Finally, Pappas does not believe that the Commission should hold affiliates liable for programming that is provided by the networks without adequate time for affiliate preview. As the recent Fox show and the Janet Jackson incident in January 2004 reveal, local network

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<sup>22</sup> Pappas, for example, expressly requested advanced feed time of Fox in December 2003 in order to ensure that it has adequate time to preview programming and make a reasoned decision, as licensee, that such programming is suitable or in the public interest. *See Exhibit A.*

<sup>23</sup> *Complaints against Various Licensees Regarding Their Broadcast of the Fox Television network Program “Married by America” on April 7, 2003*, Notice of Apparent Liability for Forfeiture, FCC 04-242 (Oct. 12, 2004)(the “NAL”).

<sup>24</sup> *Id.* ¶ 5.

<sup>25</sup> *Id.*, nt. 13 (citing press statement made by Station WRAZ-TV, released on March 9, 2003).

affiliates have little if any control of the network (or syndicated) programming that is aired on their stations if proper clearance is not provided, or if the indecent or violent programming occurs during a live network feed. While ultimately the Commission did not hold network affiliates liable for the Janet Jackson affair, it has made the initial finding that the network affiliates should be liable for the Married in the America program. Pappas acknowledges, and takes very seriously its obligation as licensee to ensure that the programming aired on its stations is suitable in the public interest. Pappas encourages the FCC to adopt practical procedures to enable it to meet its obligations with respect to its network programming.

The critical question that must be considered in this analysis is whether the network affiliates had an adequate opportunity to review the program prior to airing the programming. Pappas urges the Commission to make the affirmative statement that network programming-based violations of the indecency safe harbor and whatever regulations ultimately adopted with respect to violent programming will not result in liability for forfeitures of the local network affiliates in those cases where sufficient prior clearance time is not provided.

## **CONCLUSION**

As Mr. Pappas stated in his testimony before the House Subcommittee on Telecommunications and the Internet, local broadcasters are on the front line in the battle to protect the American public from indecent and violent programming. If they are given the proper weapons, and afforded the proper protection of law, they can greatly assist in admirable goals set forth by Congress and the FCC.

In light of the substantial evidence that violent programming has a negative effect on children, Pappas urges the Commission to adopt a safe harbor for violent programming on all providers of mass communications, with the exception of common carriers, and to provide local network affiliates with the tools to properly exercise their right to reject network programming that does not conform with these standards.

Respectfully submitted,

**PAPPAS TELECASTING COMPANIES**

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October 15, 2004



**EXHIBIT A**

December 12, 2003, Letter to Fox Television Company



PAPPAS  
TELECASTING  
COMPANIES

**Howard H. Shrier**  
SENIOR EXECUTIVE VICE PRESIDENT/  
CHIEF OPERATING OFFICER

December 12, 2003

Mr. Tony Vinciguerra  
President  
FOX Broadcasting Company  
10201 West Pico Boulevard  
Building 100  
Los Angeles, CA 90035

Dear Tony:

I am writing you to express our deep concern, and the deep concern of many of our viewers, at the instances of profane language that have been aired over the FOX network recently. As you are aware, on Wednesday evening's telecast of the Billboard Music Awards (December 10, 2003), several expletives were aired unbleeped and were completely audible to our viewers in the Midwest. We received many complaints from viewers about this in several of our markets, and, as you know, the Parents Television Council filed an indecency complaint yesterday regarding this telecast.

Just last month, FOX indicated to its affiliates in a letter from Bob Quicksilver to John Tupper, that the network "takes its obligation to provide its affiliate stations with appropriate programming very seriously" and that FOX had taken steps to strengthen the safeguards against inappropriate content through the network's Broadcast Standards and Practices group. Yet, in the last month, we have had instances of profanity unedited on closed captioning on the program "OC" (November 20, 2003), as well as very graphic and disturbing violence and depictions of narcotics use by syringe on "24" (November 25, 2003).

As broadcast licensees, we are ever mindful of the fact that we are charged with serving the needs and interests of the viewers in our respective communities and respecting contemporary community standards which we, in good faith, have undertaken the duty to consider in allowing content to be broadcast. As such, we continue to be deeply troubled by these events, by the justified upset they have caused many of our viewers, by the disrepute this brings upon your company and ours and by the potential liability that they may entail for our stations.

While you and others determine whether the fault lies with your people or your processes or both, and then attempt to remedy the failures, we must assure that we comply with our responsibilities as a broadcast station licensee. Therefore, we request that you feed to our stations, effective as soon as reasonably practicable, all pre-recorded programs that are to air in prime time or late night, no later than 3 PM EST daily. We will review and edit for illegal, obscene, profane or otherwise inappropriate content as it is our right and duty to do. In addition,

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we are purchasing time delay equipment to allow us to monitor live broadcasts and delete inappropriate content. We request that you inform us of what other appropriate action you shall take to ensure that such conduct is corrected.

Best regards,

A handwritten signature in cursive script, appearing to read "Howard H. Shrier".

Howard H. Shrier  
Sr. Exec. V.P./COO

CC: Bob Quicksilver, President

